COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS

BOARD NOS. 056030-00
057558-00
055794-00

Darren Lachance	Employee
Convertible Castle Inc./Casieri Trucking	Employers
Eastern Casualty Ins./Liberty Mutual Ins./ Workers' Compensation Trust Fund	Insurers

REVIEWING BOARD DECISION
(Judges Carroll and McCarthy)[1]

APPEARANCES
Thomas F. Walsh, Esq., for the employee
John A. Smillie, Esq., for Eastern Casualty
Andrew P. Saltis, Esq., for Liberty Mutual at hearing
Thomas Fleischer, Esq., for Liberty Mutual on brief
Brian Sullivan, Esq., for the Workers' Compensation Trust Fund at hearing
Judith A. Atkinson, Esq., for the Workers' Compensation Trust Fund on brief

CARROLL, J. On October 10, 2000, Mr. Lachance was working for Casieri Trucking (Casieri), delivering furniture when he injured his low back. (Dec. 5-6). Casieri was insured for workers' compensation by Liberty Mutual under an assigned risk policy, but Liberty Mutual claimed that they had effectuated a non-renewal of the policy in question, (Dec. 10-11), by sending correspondence to the insured that the policy would terminate on April 2, 2000, if a premium of $1,848 .00 was not received by the insurer. Liberty Mutual agrees that the letters were not sent certified. (Liberty Mutual Br. 3.) The administrative judge found that Casieri was uninsured at the time Mr. Lachance suffered his industrial injury on October 10, 2000, and, therefore, the Workers' Compensation Trust Fund was liable for the payment of any benefits due. (Dec. 11.) It is from this award the Trust Fund appeals.

[1] Judge Horan recused himself from the panel.

The Trust Fund correctly argues that the judge erred when he disregarded the requirement under G. L. c. 175, § 187C, that Liberty Mutual send its notice of cancellation by certified mail. See Dembitzski v. Metro Flooring, Inc., 13 Mass. Workers' Comp. Rep. 348, 354-355 (1999). Where the employer disputes receipt of a cancellation notice of an assigned risk insurance policy under G. L. c. 152, § 65B, we conclude here that the insurer cannot prove the employer's actual receipt of the notice without compliance with the certified mail provisions of § 187C. We think this supports the strict compliance policy underlying compulsory insurance cancellations. General Laws c. 175, § 187C has long been recognized as being applicable to workers' compensation insurance policies. See O'Neil's Case, 293 Mass. 41, 44 (1935). More recently, the Appeals Court stated in its discussion of an assigned risk cancellation:

> [The insurer] contended that it sent a copy of this letter to the Rating Bureau; *however, since no return receipt was found, there is no proof of the Rating Bureau's receipt of the letter. In contrast, [the insurer's] file contained a return receipt for the letter sent to [the employer]*. If this letter had been received by the Rating Bureau, the policy would have been rescinded, subject to the ten-day appeal period. See G.L. c. 152, § 65B.

Cummings's Case, 52 Mass. App. Ct. 444, 446 n.6 (2001)(emphasis added). The gist of the court's reasoning is that proof of certified mailing is the proof of receipt. It does not matter that the court discusses receipt by the Rating Bureau, instead of the employer; the point is the same. A proper application of the mailbox rule, allowing for the presumption of "receipt" of a cancellation notice, is ensured by compliance with § 187C's certified mail requirement. See Martinez v. Northbound Train, Inc., 18 Mass. Workers' Comp. Rep. ___ (December 8, 2004); Fontaine v. Evergreen Constr. Co., 13 Mass. Workers' Comp. Rep. 62, 66 (1999). This construction comports with the general precepts underlying the construction of workers' compensation insurance policies: "Because insurance plays an essential role in the workers' compensation scheme and due to the serious potential effects of noninsurance on both employers and employees, requirements

for cancellation of such insurance are exacting and strictly construed and applied." Armstrong v. Town & Country Carpentry, 10 Mass. Workers' Comp. Rep. 516, 521 (1996), (citing Frost v. David C. Wells Ins. Agency, 14 Mass. App. Ct. 305, 307 (1982)), *aff'd*, 47 Mass. App. Ct. 693 (1999).

Accordingly, because we consider Liberty Mutual's argument that such a requirement for certified mailing of cancellation notices does not apply to assigned risk insurance policies simply wrong, we reverse the decision, and order that Liberty Mutual is liable for payment of the awarded benefits.[2]

So ordered.

_____	_____
Martine Carroll	William A. McCarthy
Administrative Law Judge	Administrative Law Judge

Filed: **May 31, 2005**

[2] The issue related to Eastern Casualty Ins. Co. is rendered moot by virtue of our decision as to Liberty Mutual's failed cancellation.